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File No.: 11704-0001

June 15, 2005

Honorable William G. Bassler  
U.S. District Court for  
The District of New Jersey  
M.L. King, Jr. Federal Bldg  
U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07102

RE: Walsh Securities v. Cristo Property Management LTD., et.al.  
Civil Action No.: 97-3496

Dear Judge Bassler:

Please be advised that the undersigned, counsel for defendant Michael Alfieri, Esq. in the above-referenced matter, in addition to those motions referenced in the undersigned's April 6, 2005 and April 7, 2005 correspondence to the Court, is also in receipt of the following:

- Defendant Roland Pierson's Motion to Dismiss Complaint and Co-Defendant's Cross-Claims;
- Defendant Commonwealth Land Title Insurance Company's letter brief in support of Sustaining the Cross-Claim against Defendant Irene Difeo;
- Defendant Weichert, Realtors' Motion to Dismiss the Complaint;
- 3<sup>rd</sup> Party Defendant Robert Walsh's Motion to Dismiss the 3<sup>rd</sup> Party Complaints of Defendants Skowrenski, II, National Home Funding, Inc. and Commonwealth Land Title Insurance Co.;

**HOBBIE, CORRIGAN, BERTUCIO & TASHJY, P.C.**

June 15, 2005

Page 2

- Defendant Commonwealth Land Title Insurance Company's brief in opposition to 3<sup>rd</sup> Party Defendant Robert Walsh's motion to dismiss the 3<sup>rd</sup> Party Complaints of Defendants Robert Skowrenski, II, National Home Funding, Inc., and Commonwealth Land Title Insurance Company;
- Defendant Commonwealth Land Title Insurance Company's brief in opposition to 3<sup>rd</sup> Party Defendant Weichert, Realtors' motion to dismiss; and
- Plaintiff Walsh Securities, Inc.'s memorandum in opposition to Defendants Irene Difeo, Stewart Title Guaranty Company and Weichert, Realtors' motion to dismiss Plaintiff's 3<sup>rd</sup> Amended Complaint.

Please note that defendant Michael Alfieri, Esq. takes no position with regard these motions. However, as previously set forth, should the above-referenced motions be granted, defendant Michael Alfieri, Esq. respectfully submits that any dismissal granted in favor of the above-referenced defendants should not also serve to dismiss the cross-claims against those defendants.

In support of this contention, defendant Michael Alfieri, Esq. respectfully directs the Court's attention to the Court of Appeals' holding in Aetna Insurance Company v. Newton, 398 F.2d 729 (3d Cir. 1968):

“[A] dismissal of the original Complaint as to one of the defendants named therein does not operate as a dismissal of a cross-claim filed against such defendant by a co-defendant.”  
Aetna, supra, at 734, citing Frommeyer v. L. & R. Construction Co., Inc., 139 F.Supp., 579, 585-586 (D.N.J. 1956).

This rule has been unchallenged for over thirty-five years and is consistently applied by federal courts. See, e.g., Fairview Park Excavating Co., Inc. v. Al Monzo Construction Company, Inc., et al., 560 F.2d 1122, 1125-1126 (3d Cir. 1977).

**HOBBIE, CORRIGAN, BERTUCIO & TASHJY, P.C.**

June 15, 2005

Page 3

Said rule should apply here and should serve to preserve any and all cross-claims filed against defendants on behalf of defendant Michael Alfieri, Esq., regardless of whether a dismissal of the original Complaint as to any of the defendants is granted.

Respectfully submitted,

*/s/ Edward C. Bertucio, Jr.* (ECB 6435)

Edward C. Bertucio, Jr., Esq.

ECB/adh

cc: Clerk, United States District Court (via e-filing)  
All Counsel on Attached Counsel List  
Michael Alfieri, Esq.

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